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Atty. Dkt. No. 029318-0497

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jain et al.
Title: Controlled Release Nanoparticulate Compositions
Appl. No.: 09/337,675
Filing Date: 06/22/1999
Examiner: Pulliam, A.
Art Unit: 1615

**PETITION FOR REVIVAL OF APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Commissioner for Patents
Box DAC
Washington, D.C. 20231

Attn: OFFICE OF PETITIONS

Sir:

The above-identified application became abandoned for failure to file a timely and proper response to the Office Action mailed on April 10, 2001, which set a three-month period for response.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.

NOTE: A grantable petition requires the following items:

- (1) Required reply and/or fee;
- (2) Petition fee (37 C.F.R. § 1.17(m));
- (3) Statement that the abandonment was unintentional; and
- (4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

- (1) **Required reply and/or fee**

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**OFFICE OF PETITIONS
DEPUTY A/C PATENTS**

A submission, which is required when a Request for Continued Examination (RCE) is filed, is submitted with this petition according to 37 C.F.R. § 1.114. The fee for the RCE was paid when a request for Continuing Prosecution Application (CPA) was filed on October 10, 2001, the request for a CPA was converted to a RCE by the PTO. The fee for a RCE is the

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same as the fee for a CPA. In addition, Applicants filed a petition for an extension of time with the appropriate fee when the CPA was filed on October 10, 2001.

(2) Petition fee (37 C.F.R. § 1.17(m))

A check in the amount of \$1,280.00 is enclosed for the amount stated in 37 C.F.R. § 1.17(m) to cover the fee for this petition.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

(3) Statement that the abandonment was unintentional

Applicants hereby state that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional.

The present application was abandoned as a result of Applicants' filing a second Continuing Prosecution Application on October 10, 2001, where a previously filed first Continuing Prosecution Application was filed on February 28, 2001. The filing of the first Continuing Prosecution Application established a filing date of February 28, 2001. The American Inventors Protection Act (AIPA) amended 37 C.F.R. § 1.53(d)(1)(i) to provide that continued prosecution application practice under § 1.53(d) does not apply to applications if the prior application has a filing date on or after May 29, 2000. Therefore, the second request for Continuing Prosecution Application was determined to be improper (based on the February 28, 2001, CPA date) and according to the Notice published at 65 Federal Register 50,093 (Aug. 16, 2000), the PTO will automatically treat the improper CPA as a request for continued examination of the prior application. Applicants submitted a CPA without any accompanying submission; it is noted that submission of a CPA does not require a further submission.

Therefore, when the CPA filed on October 10, 2001, was converted to an RCE, Applicants failed to fulfill the requirements of 37 C.F.R. § 1.114 which require filing a submission with a RCE. Therefore, in light of the above facts, the application was unintentionally abandoned.

(4) **Any required terminal disclaimer (37 C.F.R. § 1.137(c))**

No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Should there be any questions regarding this submission, the petitions examiner is invited to contact the undersigned agent of record at the telephone number set forth below.

Respectfully submitted,

Date Dec. 3, 2001

By Mary C. Icell Reg. #41,545

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